

Public Hearing: April 7, 2014

FACT SHEET

TITLE: Updating LMC 8.38 Public Swimming Pools

SPONSOR: Health Department

OPPONENTS: None specifically identified

OTHER DEPARTMENTS AFFECTED: Parks and Recreation

STAFF RECOMMENDATION: For

APPLICANT: Health Department

REASON FOR LEGISLATION:

To assure public health is protected from recreational waterborne illnesses by: updating the existing ordinance, adopting State of Nebraska Design and Construction Standards, adopting and modifying minimum State Operational and Management Standards, adopting certificate requirements for pool operators and pool water quality testers, and providing appropriate due process.

DISCUSSION

Lincoln Municipal Code (LMC) 8.38 Public Swimming Pools was originally enacted by the City Council in 1978 to protect the public from drowning, injury and recreational waterborne illness. Since that time, there have been no major updates to this ordinance. However, the Nebraska Department of Health and Human Services has updated Title 178 NAC 2 Operation and Management of Public Swimming Pools, and Title 178 NAC 4 Public Swimming Pool Design and Construction Standards, which are the minimum operation standards for Public Swimming Pools and Spas in the State of Nebraska and in Lincoln. Lincoln has used these standards for many years as the foundation for specific regulations for public swimming pools.

The Health Department is proposing to update LMC 8.38 (see attached section by section description). The Health Department is proposing to incorporate several differences from State standards, which the Health Department believes are necessary to assure the public's health is protected from drowning, injury and illness posed by public swimming pools. These standards include:

Secondary Disinfection Standard for Class E Pools (Spray Parks): Consistent with the proposed Model Aquatic Code being developed by the U.S. Centers for Disease Control and Prevention, the Health Department is proposing that all Class E pools that recirculate water to spray features meet a secondary disinfection standard to achieve a 3-log reduction of *Cryptosporidium* oocysts. *Cryptosporidium* is highly resistant to chlorine (the main disinfectant used in public swimming pools) and has been the cause of numerous large outbreaks of illness. The adoption of this requirement will greatly reduce the potential of a *Cryptosporidium* outbreak from a spray park.

Lincoln Swimming Pool Operators Certificate: Currently every public swimming pool must have a licensed Lincoln Swimming Pool Operator. The updated ordinance would change the license to a certificate, which will be good for two years and cost \$20. This \$20 cost is already included in the existing \$60 training cost.

Lincoln Pool Water Quality Tester Certificate: Swimming pool water chemistry is required to be tested at a minimum of every 4 hours. Currently anyone can perform pool water quality testing without benefit training and testing on how to properly conduct such tests and on actions required when swimming pool water is found to pose immediate health risks. In 2013, the Health Department conducted 505 inspections of which 133 (26%) resulted in immediate closure. The majority of these closures were for public health risk posed by violations of pool water chemistry standards.

The Health Department believes that the frequency of these violations that present immediate health risk will be reduced significantly with the implementation of the Lincoln Pool Water Quality Tester requirements. This, in turn, will reduce the risk of disease transmission in public swimming pools, and reduce the risk of community wide outbreaks of illnesses such as cryptosporidiosis.

The Health Department is proposing that any person that conducts the required testing and recording of pool water quality must hold either a Lincoln Pool Water Quality Tester Certificate or a Lincoln Swimming Pool Operators Certificate. Those persons wishing to obtain a Lincoln Pool Water Quality Tester Certificate will need to attend a training class, which will include a demonstration of a working knowledge of pool water quality testing procedures. The certificate will be good for two years and cost \$20.

Pool Operator Availability: Public swimming pools are broken down into six “classes”, including: A = municipal or competitive swimming; B = apartment, hotel, etc.; C = spa; D = wading; E = spray park; and F = health club. The Health Department is proposing that every class B, C, D, E and F swimming pool must have a Lincoln swimming pool operator “available”, which means that the pool operator can be onsite within 60 minutes. Nebraska regulations require that a swimming pool operator to be available for class B and F pools, but not for class C, D or E pools.

Lifeguard Staffing Requirements at Class B and F Pools: Class B and F swimming pools, which would include public swimming pools at apartments, hotels, neighborhood associations, and health clubs are not required to provide lifeguards, but may choose to do so. The Health Department is proposing that when a class B or F pool chooses to provide lifeguards, that they must meet the same lifeguard staffing requirements as class A pools. This includes providing one lifeguard on duty per each 1-100 bathers and to provide a sufficient number of lifeguards to permit periodic relief or rest periods. We have had instances in which such pools posted that they had lifeguards on duty, but were not adequately staffed and they left the pool area during break periods. Staff believes this requirement is necessary to assure the public’s safety and to prevent class B or F pools from claiming to have lifeguards on duty without providing adequate numbers of lifeguards.

Stakeholder/Board of Health Input: The Health Department made significant effort to gather stakeholder input, including: sending a specific mailing to all public swimming pool owners and operators on these changes and notifying them of the upcoming meetings; posting the proposed changes on the City website; holding three public meetings; presenting an overview of the proposed changes to over 400 swimming pool operators at our training classes; and meeting with key stakeholders. No specific opposition was identified.

The Lincoln-Lancaster County Board of Health reviewed and approved the proposed changes to LMC 8.38 Public Swimming Pools and the regulations on March 11, 2014.

POLICY OR PROGRAM CHANGE: Yes

COST OF TOTAL PROJECT: \$0 – This work is 100% fee funded.

SOURCE OF FUNDS:

CITY: None

NON CITY: Permit and certificate fees

BENEFIT COST: N/A

FACT SHEET PREPARED BY: Scott E. Holmes, REHS, MS, Manager, Environmental Public Health Division, Lincoln-Lancaster County Health Department

REVIEWED BY: Judith A. Halstead, MS, Health Director

**Summary of Proposed Changes to
Lincoln Municipal Code 8.38 Public Swimming Pools
3/19/14**

8.38.010 Definitions.

Definitions are updated to reflect current State regulations and new regulations in this ordinance.

8.38.015 Purpose.

A purpose statement is added to clarify the intent of the ordinance to reduce hazards to public health and safety, including drowning and serious injury; minimize disease transmission potential; prevent nuisance conditions; and promote physical activity and afford recreation. Other health ordinances have such purpose statements.

8.38.020 Approval for Construction.

In order to assure that public swimming pools are correctly designed prior to construction, the ordinance requires Health Director approval prior to the issuance of a building permit. This puts existing practice into ordinance.

8.38.030 Design and Construction Standards.

This section adopts state regulations Nebraska Title 178 NAC 4 Public Swimming Pool Design and Construction Standards by reference.

8.38.040 Permit to Operate.

Changes clarify that the permit to operate will be valid through March thirty-first and that the permit be conspicuously posted on the pool premises.

8.38.045 Permit; Application.

The current ordinance does not provide specificity on the permit application. New language requires that an application for a permit to operate a swimming pool shall be made to the Health Director on forms furnished for such purpose. Forms will require the owner's full name, mailing address, phone number, email address, the establishment name, location and type of pools or spas, the signature of the owner, and other relevant information. This is current practice, but this section formalizes that practice in ordinance.

8.38.050 Operational Standards.

This section specifies that pools shall be operated and managed according to the "Lincoln Operational and Management Standards for Public Swimming Pools." This is a separate document from LMC 8.38, which will be adopted by resolution. It is necessary to address the numerous details and circumstances related to the operation and management of different types of public pools. Nebraska Title 178 NAC 2 Operation And Management of Public Swimming Pools was not able to be adopted by reference due to numerous content issues that referenced State authority instead of local, State permitting procedures, inspections, fees, refunds, enforcement, etc. The majority of these are in LMC 8.38.

8.38.060 Supervision of Swimming Pools.

This section is deleted and these requirements are now addressed in section 040 and in the Operational Standards adopted under 050.

8.38.070 Lifeguard Requirements.

Section 070 is deleted and lifeguard requirements are now addressed in Operational Standards adopted under 050. This does not change requirements for Class A pools lifeguard requirements and proposes consistency for Class B and Class F pools.

8.38.073 Certificate for Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester; Required.

Provisions are added to require the issuance of a certificate for all swimming pool operators and pool water quality testers. Historically Lincoln Swimming Pool Operators were issued “licenses”, which is the equivalent of a State of Nebraska Swimming Pool Operator permit. However, the Lincoln Pool Water Quality Tester certificate is new (see “Rationale” in the next paragraph). The certificates shall be good for two years. This will allow the Health Director to take enforcement action if necessary against persons holding such certifications, such as suspending their certificate to do such work.

Rationale for Requiring Lincoln Pool Water Quality Tester Certificate

In FY 13, LLCHD conducted 505 public swimming pool inspections. Of these, 133 (26% or about 1 in 4) resulted in immediate closure of the pool due to the seriousness of the public health risk posed by the violation(s). Swimming pool water chemistry is required to be tested regularly by those owning/operating pools. However, under the current ordinance and regulations, anyone can perform such testing without benefit of:

- training and testing on how to properly conduct such tests,
- education on illness transmission from swimming pool water, and
- education on actions required when swimming pool water is found to pose immediate health risks.

The Health Department believes that the frequency of violations that present immediate health risk will be reduced significantly with the implementation of the Lincoln Pool Water Quality Tester requirements. This will reduce the risk of disease transmission in public swimming pools, and reduce the risk of community wide outbreaks of diseases such as cryptosporidiosis in Lincoln.

8.38075 Certificate for Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester; Application

This section specifies what must be included in the application forms. Any person holding a current, valid license as a Lincoln Swimming Pool Operator prior shall be considered a Lincoln Swimming Pool Operator until their license expires. Any person holding a Lincoln Swimming Pool Operator Certificate does not need to hold a Lincoln Pool Water Quality Tester Certificate.

8.38.077 Certificate Lincoln Swimming Pool Operator or a Lincoln Pool Water Quality Tester; Requirements

This section requires that before a certificate can be issued, the applicant shall be required to satisfactorily complete a training and testing program and pay the fee (\$20). The certificate shall be good for two (2) years.

8.38.090 Swimming Pool Permit Fees; New; Renewal; Variance.

The fee (\$365) for a renewal permit for a public swimming pool is not changed, nor is the fee for an additional spa (\$115), pro-rated permits, or late permits. A new fee is proposed for the work required to issue a new swimming pool permit. There are approximately 1 to 3 new swimming pool permits issued per year. This fee is proposed to be \$465, which is \$100 more than a standard renewal permit. This additional \$100 will help cover some of the cost of staff time required to:

- review plans for a new public swimming pool
- to insure compliance with code requirements, design and construction standards, and Lincoln Operational and Management Standards for Public Swimming Pools,
- to provide onsite technical assistance during the construction process, and
- to conduct the final inspection to allow the pool to open.

A variance request review fee (\$200) is added to cover the first two hours of staff review time. If additional review time is required, a fee of \$100 per hour of time is proposed. This is similar to fees charged for variances in other health ordinances.

8.38.080 Compliance with Requirements of the State of Nebraska Health Department.

This section is deleted. These requirements are addressed in sections 030 Design and Construction Standards and 050 Operational Standards.

8.38.095 Permit; Renewal Late Fees.

This section is deleted. Late fees are now addressed in section 090.

8.38.097 Lincoln Swimming Pool Operator and Lincoln Pool Water Quality Tester Certificates; Fees.

A \$20 application fee will be charged for those persons desiring to hold a Lincoln Swimming Pool Operator and Lincoln Pool Water Quality Tester certificate. Each certificate shall be valid for two years from the date of issuance.

8.38.100 Polluted or Unsafe Water.

This section modifies existing language that had the same intent. If a body of water is determined by the Health Director to be unsafe due to an imminent health risk, then it is not allowed to be used for swimming or bathing purposes.

8.38.110 Inspection and Enforcement.

This section adds clarity to the procedural details for conducting pool inspections; establishes what must be included in inspection reports and warning notices; requires re-inspections to determine compliance; and requires public disclosure of the inspection report and warning notice.

Permit suspension, revocation, notice, hearings and appeals

The existing version of LMC 8.38 provided for “Revocation of Permit”, however the ordinance was vague regarding the process by which a revocation occurred and did not clarify the rights of the person whose permit had been revoked. The revised sections 120, 140, 150, 160 and 170 establish procedures for the Health Director and the aggrieved person to utilize in the event that a permit or certificate has been suspended or revoked by the Health Director. These are modeled after other Health ordinances.

Section 8.38.120 Permit or Certificate; Suspension, Revocation.

This sets forth provisions for suspension or revocation of a permit to operate a pool for violations of state statutes or ordinances of the City or causing a health risk. It also provides for suspension or revocation of a swimming pool operator or a pool water quality tester certificate.

8.38.140 Suspended Permit or Certificate; Reinstatement.

Any person whose permit or registration has been suspended may apply for reinstatement.

8.38.150 Notice; Service.

This section defines the process for serving notice for a suspension or revocation.

8.38.160 Enforcement Hearings.

Provides a framework for enforcement hearings, including: time frames for conducting a hearing after a request has been made; the appointment of a hearing officer by the Health Director; the rights of person who requested the hearing to introduce evidence and call and examine witnesses; and for the Health Director to make a final determination within ten days of the hearing.

8.38.170 Appeals.

The Health Director’s final determination can be appealed to the district court.

8.38.180 Variances.

The existing version of LMC 8.38 does not provide for variance requests. This provision is needed to accommodate potential improvements or advancements in pool design, construction, operation and management. For example, a variance could be used to allow a new disinfectant technology that is not commonly used in pools, so long as the variance is as protective of public health as existing disinfectant standards.

8.38.190 Liability of Owner.

These are general provisions included in other ordinances.

8.38.200 Severability and Savings Clause.

These are general provisions included in other ordinances.